



## Law as a Supreme System and Social Control Tool

Carolina Tuhumury

Lecturer Section of Constitutional Law and State Administrative Law, Faculty of Law Pattimura University,  
Ambon, Indonesia

<http://dx.doi.org/10.18415/ijmmu.v10i6.4797>

---

### **Abstract**

The phenomenon of positivism-based and social structure-based legal thinking has influenced legal thinking in Indonesia. The daily reality that occurs in society where the law plays a very important role as social control of society. Because without a written or unwritten legal regulation such as customary law, for example, life in society will not run harmoniously. The main sociological objects are family, politics, religion, control (social control). Sociology also highlights the reciprocal relationships between elements of society, such as the norms of family life, the relationship between political institutions and religious institutions. The process of legal development actually does not stop there, but can take place further. Until societal norms not only to be institutionalized in society but internalized, meaning that the level of development of each member of society behaves in line with behavior that meets the needs of society. To meet the needs of the community, it is necessary to form law as social control of the community, interpreted as a supervisor by the community over the course of government. Thus social control aims to achieve harmony between stability and change in society.

**Keywords:** *Supremacy System; Tool of Social Control*

### **Introduction**

Society or social life is actually a collection of various kinds of relationships between its members. This relationship ultimately forms social life. Social life is the fabric of the various relationships that are carried out between members of society with one another.

Community life can run in an orderly and orderly manner supported by the existence of an order in society, namely creating permanent and regular relationships between community members which consist of:

1. Habits consist of customary norms that are carried out by the community on a daily basis, which are seen as a legal act that must be obeyed. If they violate, the customary norms are used.
2. Pure law, which is made intentionally by an auxiliary body in society that is specifically assigned to carry out, create, make law, to uphold order in society.
3. Decency is the order of values of community behavior in an action that is considered not contrary to the norms and rules that apply in society.

Law is basically a type of order, but because it is called an order, every real law flows from a definite source, when an order is stated or announced, one party expresses a will for the other party to carry out or allow it to be carried out.

Based on the close relationship between law and society as a social reality, this paper aims to discuss a multidisciplinary approach, namely law and a sociological perspective, within the framework of law as a means of social control and the supremacy of law enforcement.

Law has its own uniqueness, which can be distinguished by:

1. *Normwissenschaft*, namely the science of legal rules. The object highlights " *das sollen* ", what should be done and what should not be done. Better known as civil law and criminal law.
2. *Tatschenwissenschaft*, the science of legal reality, in Indonesia we are familiar with Legal Sociology or Law and Society.
3. *Begriffenwissenschaft*, is about the basic understanding of law, in Indonesia we are familiar with the Introduction to Law.

Legal subjects are everything that supports rights and obligations, recognition of humans as legal subjects can be seen implicitly in Article 6 of the *Universal Declaration of Human Rights* "Equality before the law and man is person before the law".

Formal sources of law are sources of law that can directly form legal rules that will bind society, which include formal sources of law:

1. Laws in the form of written law (*ius scripta*) as opposed to unwritten law (*ius nonscripta*), consisting of statutes of formal meaning; namely the decision of the authorities seen from the form and way of occurrence of the law. Material laws, namely; decisions of rulers seen from its contents
2. Habits are actions that are carried out repeatedly which are considered appropriate to do and have normative power "*die normative kraft des faktischen*"
3. International agreements or treaties, is a source of formal law. Consists of *Treaties*; approval prior to ratification by the President, and *Agreement*; approval is known after being ratified by the President.
4. *Jurisprudence*, in the form of a binding judge's decision.
5. *Doctrine* is the opinion of legal experts which is often used as a source of law.

As described above, the basic understanding of law is always related to what is called reality, which is called real, meaning that something physical or objective can be perceived by the *senses*. According to Steven Law

"In the beginning, when most people answered about reality, the answers pointed to what they experienced and felt about everything that was around them at that moment."

Philosophically, the meaning of reality is quite broad, the views of philosophers about reality are as follows:

1. Campanella, wrote a reality that is equal and has perfection in various levels of knowledge
2. Kant, identifying the real as what is in harmony with the material conditions of experience
3. Prierce, identifying reality as what is believed by the research community at the end of an ideal series of research.
4. Freund, uses the term "reality principle" menuani to stand on the goal of therapy where mature individuals are able to overcome illusions to stand on reality.

When examined historically, reality can be seen from several perspectives. First, where reality is something that can only be grasped through reason (ideas, ideas, essence). Second, namely reality related to something that is actual, real, existing and objective, which are only understood through *intuition mechanisms* and legal senses and social realities that occur in a society, Donald Black sees the need for changes that occur in law, namely how law is seen and interpreted and how law is implemented in society. For Black, the understanding of the sociological analyst of law is not only seen as rational and abstract, but law has broad dimensions in the form of humanity and social.

In a court process called a "case", it cannot only be seen by the law alone. Instead of having a sociological aspect, Black suggested that the case be seen as something that has a social structure, so that "*the sociology of case*" can be studied.

## **Discussion**

The phenomenon of positivism-based and social structure-based legal thinking has influenced legal thinking in Indonesia.

In the daily reality that occurs in society, the law plays a very important role as social *control* for society. Because without a legal regulation, written or unwritten in customary law, life in society will not run harmoniously.

DHM Meuwissen, argues that the sociology of law is currently developing rapidly and this science is directed to explain the positive law that applies, that is, its content and form change according to time and place with societal factors.

The sociological object of law at the first level is social reality. The second level is legal rules in a way that plays a role in society. According to JJH Bruggink, the sociology of law can be divided into two streams:

1. *Sociology of Empirical Law*. The orientation of this flow is to collect materials from an external perspective. That is, a standing point of observation that observes. By organizing material and drawing conclusions between legal principles and the reality of society.
2. *Sociology of Contemplative Law*. *Contemplative* legal sociology places itself in another perspective, meaning that an external perspective is unacceptable in relation to the object it studies. Contemplative legal sociology research through the study of *juridization*, that the rule of law has the opposite effect than intended instead of regulating social life in a better way.

Bredemeir analyzes the law of mutual interaction, with *pattern variables*. In a social system derived from *economy, science and technology, goal pursuance*, and maintenance or maintenance *patterns*. The existence of the social system from the results of interpretation of a sense of justice is called *law realityship* into *pattern variables*, namely neutrality and legal reactivity concretized in the form of the structure of the roles, duties and obligations of the community.

Auguste comte, a French origin. Is the father of the first sociology, namely *socius* and *logos*. He has the notion that sociology consists of two parts, namely *social statistics* is a science that studies relationships feedback. Meanwhile, *social dynamics* observes how the institution has developed over time.

The main sociological objects are family, politics, religion, control (*social control*) Sociology also highlights the reciprocal relationships between elements of society, such as the norms of family life, the relationship between political institutions and religious institutions.

The process of legal development actually does not stop there, but can take place further. Until societal norms do not just become *institutionalized* in society but *internalized*, meaning that the level of development of each member of society behaves in line with behavior that meets the needs of society.

To meet the needs of the community, it is necessary to establish law as social *control* of the community, interpreted as a supervisor by the community over the course of government. Thus social *control* aims to achieve harmony between stability and change in society.

From the point of view of the nature of social *control* is *preventive* or *repressive*, *prevention* is an effort to prevent the disturbance of certainty and justice. While *repressive* efforts aim to restore legal harmony with society, social *control processes* can be carried out without violence or coercion (*coercive*).

Social *control* functions to form new rules that replace old rules, in *compulsion* a situation is created where a person is forced to obey or change his attitude indirectly results in propriety. Tools of social control become part of society and its embodiment outside in the form of :

1. Pemindaan in the form of a prohibition, which if violated will get suffering for the violator
2. Standard compensation, is an obligation where the initiative to process there is a party who is harmed. The aggrieved party requests compensation from the opposing party, which is *accusatory in nature*.
3. Therapy or conciliation, is reimidial in nature, meaning that it aims to return the situation to its original state. In this way, each disputing party seeks efforts to resolve it compromisingly *or* invites a third party. With these norms, social *control* will be held in every society . If human behavior is governed by written law and legislation, namely the decisions of the authorities that are official and written and generally binding. The implementation of formal *social control means* that these written norms come from those who have formal power and authority. Informal social control ( *informal social control* ) through education, religion, seminars, and dissemination of legal understanding.

Usually, what is placed first is social control which is considered the softest in the form of binding advice, then applies stricter social *control* . In this process, if other means do not produce the goals achieved, legal norms are applied at the last stage.

Based on Article 1 paragraph (3) of the third amendment to the 1945 Constitution, namely that Indonesia is a state based on law, not a state power, the basic principles adhered to in the basic law provide an overview of the law as the foundation of social life. The law that is upheld in our country is the rule of law, not the supremacy of power.

Law enforcement is the process of making efforts to uphold or actually function legal norms as a guide for actors in traffic or legal relations in the life of society and the state. Translation of the word "*Law Enforcement*" into Indonesian using the word "Law Enforcement" in a broad sense can also use the term "Enforcement of Regulations" in a narrow sense. This distinction between the formality of written legal rules and the scope of the justice values they contain even arises in English itself with the development of the term "*The Rule Of Law*" or in terms of "*The Rule of Law and Not Of A Man*" Versus the term "*The Rule By Law*" which means "*The Rule Of Man By Law*" in the term "*The Rule Of Law*" contains the meaning of government by law, but not in a formal sense, but includes the values of justice contained therein. Because of that, the term "*The Rule Just Of Law*" is used. the opposite term is "*The Rule By Law* " which is intended as a government by people who use law only as a mere tool of power.

The definition of law enforcement can also be viewed from the point of view of the object, namely from a legal perspective. In this case the meaning includes broad and narrow meanings.

- a. In a broad sense, law enforcement includes the values of justice contained in sound or formal as well as the values of justice that live in society.
- b. In a narrow sense, law enforcement only concerns the enforcement of normal and written regulations.

Objectively, the legal norms to be upheld include the notion of formal law and material law. Formal law is only concerned with written laws and regulations, while material law also includes the understanding of the values of justice that live in society. In its own language, sometimes people distinguish between the meaning of law enforcement and justice enforcement.

Law enforcement can be associated with the notion of "*law enforcement*" in a narrow sense, while law enforcement in the sense of material law is termed justice enforcement. In English it is also sometimes distinguished between the conception of "*Court Of Law*" in the sense of a court of law and "*Court Of Justice*" or a court of justice. Even with the same spirit, the Supreme Court in the United States is called the "*Supreme Court Of Justice*".

These terms are intended to emphasize that the law that must be upheld is essentially not the norms of the rules themselves, but the values contained therein. Indeed, there is a doctrine that distinguishes between the duties of a judge in the process of proving in criminal and civil cases. In civil cases it is said that it is enough for the judge to find mere formal evidence, while in criminal cases Only then are judges obliged to seek and find material truth concerning the values of justice that must be embodied in criminal justice.

The nature of the judge's job is to seek and find material truth in order to achieve material justice. Such obligations apply, both in the criminal and civil fields. Our understanding of law enforcement should contain the enforcement of justice itself, so that law enforcement and justice are two sides of the same coin.

Law can be created if people are aware of the law without causing harm to other people. Law enforcement in Indonesia is inseparable from the role of law enforcement officials. According to Article 1 Chapter I of the Criminal Procedure Code (KUHAP). What is meant by this Law are as follows:

1. Investigators are officials of the state police of the Republic of Indonesia or certain civil servant officials who are given special authority by law to conduct investigations.
2. Prosecutors are officials authorized by this law to act as public prosecutors and to carry out court decisions that have obtained permanent law.
3. The public prosecutor is the prosecutor who is authorized by this law to prosecute and carry out the judge's decision.
4. Judges are state court officials who are authorized by law to adjudicate.
5. Legal adviser is someone who fulfills the requirements determined by law to provide legal assistance.

Law enforcement apparatus includes the notion of law enforcement institutions and law enforcement officials (people). In a narrow sense, law enforcement officials are involved in the process of upholding the law, starting from witnesses, police, legal advisors, prosecutors, judges, and correctional officers. Each apparatus and related apparatus also includes parties concerned with their duties or roles, namely those related to reporting or complaint activities, investigations, investigations, prosecutions, proofs, imposition of sentences and imposition of sanctions, as well as efforts to reinstatement (resocialization) of *convicts*. In the process of working the law enforcement apparatus, there are three important elements that influence, namely:

- a. Law enforcement institutions and various
- b. Sets of supporting facilities and infrastructure and institutional working mechanisms;
- c. Work culture related to the apparatus, including regarding the welfare of the apparatus,
- d. Regulations that support both institutional performance and those that regulate legal material that is used as work standards, both material law and procedural law.

Systemic law enforcement efforts must pay attention to these three aspects simultaneously, so that the process of upholding law and justice itself internally can be realized in a real way.

However, apart from the three factors above, complaints regarding the performance of law enforcement in our country so far, actually also require a more thorough analysis. Therefore, there are four important functions that require attention namely:

- a. law making ( '*the legislation of law*' or '*law and rule making*' ),
- b. socialization, dissemination and even cultivating law ( '*socialization and promulgation of law*' ,
- c. law enforcement ( '*the enforcement of law*' ). All three need support
- d. effective and efficient administration of law ( '*the administration of law*' ) carried out by an accountable ( '*accountable*' ) government.

The development of legal administration and the legal system can be called the fourth important agenda in addition to the three agendas mentioned above. In a broad sense, '*the administration of law*' includes the notion of implementing the law ( '*executing rules*' ) and the administration of law itself in a narrow sense. For example, it can be questioned how far the existing documentation and publication system for various legal products has been developed in the framework of documenting regulations ( '*regels*' ), decisions on state administration ( '*beschikkings*' ), or determinations and decisions ( '*verdicts*' ) of judges at all levels and layers of government from the center get to the areas. Although there is a theory of '*fiktie*' which is recognized as a universal legal doctrine, law also needs to function as a means of education and reform. Society ( '*social reform*' ), and because of that people's ignorance of the law must not be left without efforts to socialize and cultivate law systematically and deliberately.

According to Soerjoono Soekanto, the factors that influence law enforcement are as follows:

### 1. The Legal Factor Itself

Every applicable legal regulation must originate from a higher level regulation, meaning that all regulations cannot be of a higher degree.

W Zevenbergen stated that legal regulations have juridical behavior, these legal regulations are formed according to the prescribed method . For example, laws in Indonesia are formed by the President with the approval of the House of Representatives. Legal regulations apply philosophically, if the legal regulations are in accordance with the ideals of law ( '*rechtsidee*' ) as the highest positive value. In Indonesia, the ideal of law as the highest positive value is a just and prosperous society based on Pancasila and the 1945 Constitution. The material regulated in laws and regulations must be complete, carefully and meticulously formulated without losing its nature and keeping abreast of developments and circumstances.

### 2. Law Enforcement Factors

In sociology, every law enforcer has a position (status) and role ( '*role*' ), social position is a certain position in the structure of society.

Which contains rights and obligations. Law enforcement in making decisions requires personal judgment which plays a role because:

- a. There is no such complete legislation, so as to regulate the behavior of all human beings.
- b. There are obstacles to completing legislation with community development, causing uncertainty.
- c. Lack of costs to implement legislation.
- d. There are individual cases that require special handling.

### 3. Facilities or Facilities Factor

Facilities or facilities include skilled educated people, good organization, adequate equipment, adequate finances, and others. Examples in society for example; regulations on land registration have not been implemented properly. The existence of sanana or facilities is very decisive in law enforcement, without adequate facilities or facilities, law enforcement cannot run well.

### 4. Community Factors

The community knows knowledge about the law and is aware of the law influencing the creation of legal order and avoiding punishment. So efforts are needed from legal awareness, namely:

- a. Legal knowledge
- b. Legal understanding
- c. Attitude towards norms
- d. Legal behavior

### 5. Cultural factors

Culture includes the values that underlie applicable laws, values that are considered good to be adhered to and values that are considered bad to be avoided. Indonesian culture is based on customary law that applies to each region, but written law or statutory regulations also apply .

Laws in the material sense are written regulations that are generally accepted and made by the legitimate Central and Regional Authorities. Regarding the enactment of the law, there are several principles whose aim is for the law to have a positive impact. These principles include :

1. The law is not retroactive.
2. Laws made by higher authorities,
3. has a higher position as well.
4. Laws that are specific override laws that are general in nature, if the creators are the same .
5. Laws that apply later cancel the laws that apply earlier.

Law enforcement indiscriminately, the creation of *good governance* is to build a sound legal system, both software ( ie laws), hardware (*hardware*) namely law enforcers, as well as human resources that run the system (*human-ware*) , *namely*:

1. Transparency (*transparency*): Openness covers all aspects of activities that involve the public interest.
2. Responsiveness : Hving responsiveness to the wishes and complaints of each *stakeholder*.
3. *Consensus orientation*: As an intermediary from interested parties in terms of policies and procedures.
4. Justice (*Equality*) : All citizens have the same rights in obtaining welfare and justice
5. *Effectiveness and efficiency*: The state facilitates natural resources and human resources to be used as best as possible.
6. *Accountability*: Decision makers in the government, private sector, and *civil society* are accountable to the public and . *stakeholders*
7. Strategic vision : Leaders and the public have the same perception of *good governance* in human development and development far ahead.

## **Closing**

Law enforcement efforts are only one element of our overall problem as a rule of law country that aspires to uphold and realize social justice for all Indonesian people. The law is unlikely to be upheld, if the law itself does not reflect the feelings or values of justice that live in society. This means that the problems we face are not only related to law enforcement efforts but also law reform or new law making.

One of the duties and authorities of the government is to organize an open-bare dienst or public service, namely the government administers the public interest. The task of administering the public interest is carried out by a government agency (bestuurorgaan administratief organ) which can manifest as an officer (functionary) or a government agency (openbare lichaam).

To carry out good governance, namely a country must have general principles of good governance, namely; the principle of honesty (fair play), the principle of accuracy (zorgvuldigheid), the principle of purity and purpose (zuiverheid van oogmerk), the principle of balance (evenwichtigheid), the principle of legal certainty (rechts zekerheid).

## **References**

- Damayati, Khuzafah. *Legal Theorization Study of the Development of Legal Thought in Indonesia 1945-1990* Surakarta. Muhamadiyah University Surakarta Press. 2004.
- Effendi, Rusley. et . al *Legal Theory*. Ujung Padang: Hasanuddin University Press. 1991.
- Rahardjo, Satijpto. *Legal studies*. Bandung: PT Citra Aditya Bakti, 2000.
- Soekanto, Soerjono. *Sociology an Introduction*. Jakarta: PT RajaGrafindo Persada. 2002.
- Sulisyoso, Bambang. et al. *Aspects of the Development of Judicial Power in Indonesia*. Yogyakarta: UII. Press, 2004.
- The Amendments to the 1945 Law and the Complete Amendment Process to the 1945 Constitution (First 1999-2002)*. Jakarta: Sinar Graphics. 2002.

## **Copyrights**

Copyright for this article is retained by the author(s), with first publication rights granted to the journal.

This is an open-access article distributed under the terms and conditions of the Creative Commons Attribution license (<http://creativecommons.org/licenses/by/4.0/>).